

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MICK ROCK,	: No. 17 Civ. 2618 (ALC) (DCF)
	:
Plaintiff,	:
	:
-against-	: DEFENDANTS' RESPONSE
	: TO PLAINTIFF'S COUNTER-
	: <u>STATEMENT OF FACTS</u>
ENFANTS RICHES DEPRIMES, LLC,	:
BARNEYS NEW YORK, INC. and THE	:
REALREAL, INC.,	:
	:
Defendants.	:
-----X	:

Defendants Enfants Riches Deprimes, LLC ("ERD") and Barneys New York, Inc. ("Barneys," and together with ERD, "Defendants") respectfully submit the following response to Plaintiff's Counter-Statement of Facts pursuant to Local Rule 56.1.

Plaintiff's Asserted Material Fact No. 1

Mic Rock ("Rock") is a professional photographer who has been in the business of licensing his work for over 50 years. [Rock Declr., ¶ 3].

Defendants' Response to Plaintiff's Asserted Material Fact No. 1

Plaintiff's Asserted Material Fact No. 1 is undisputed.

Plaintiff's Asserted Material Fact No. 2

Rock is the true creator, author and owner of the photograph of musician Lou Reed which is the subject of this litigation (the "Reed Photograph"). [Rock Declr., ¶ 4]

Defendants' Response to Plaintiff's Asserted Material Fact No. 2

Defendants dispute Plaintiff's Asserted Material Fact No. 2. The record does not include any independent testimony or evidence as to Plaintiff's creation of the Reed Photograph and the Registration in issue. Indeed, the Registration explicitly excludes preexisting works such as the

Reed Photograph. *See* Decl. of Barry I. Slotnick in Supp. of Mot. for Summ. J. (“Slotnick Decl.”), Dkt. No. 48, Ex. A.

Plaintiff’s Asserted Material Fact No. 3

The Reed Photograph is registered with the Copyright Office (the “USCO”) under registration number VA 1-766-990 with effective date of February 22, 2011 (the “990 Registration”). [Rock Declr., ¶ 5].

Defendants’ Response to Plaintiff’s Asserted Material Fact No. 3

Defendants dispute Plaintiff’s Asserted Material Fact No. 3. The Registration explicitly excludes preexisting works such as the Reed Photograph. *See* Slotnick Decl., Ex. A.

Plaintiff’s Asserted Material Fact No. 4

As of the time the Reed Photograph was submitted to the USCO as part of an application for the 990 Registration, Rock did not play any role in nor have any of knowledge of the application or registration process. Rock’s book publisher, which is a non-party, registered the Reed Photograph on his behalf as part of the 990 Registration. [Rock Declr., ¶ 6].

Defendants’ Response to Plaintiff’s Asserted Material Fact No. 4

Defendants dispute Plaintiff’s Asserted Material Fact No. 4 with respect to Plaintiff’s role in the application for the Registration as this is not supported by any independent testimony or evidence in the record. Defendants do not dispute that Plaintiff’s publisher submitted the Registration.

Plaintiff’s Asserted Material Fact No. 5

At no time before (or after) this lawsuit was initiated did the non-party book publisher who handled the registration process for the 990 Registration notify Rock that the Reed Photograph was not included as part of the 990 Registration. [Rock Declr., ¶ 7].

Defendants’ Response to Plaintiff’s Asserted Material Fact No. 5

Defendants dispute Plaintiff’s Asserted Material Fact No. 5. The record does not include any independent testimony or evidence as to any communications between Plaintiff and his publisher or Plaintiff’s knowledge of the contents of the Registration.

Plaintiff's Asserted Material Fact No. 6

At no time relevant to this litigation did Rock know that the 990 Registration contained inaccuracies that would effectively preclude registration of the Reed Photograph as part of the 990 Registration. [Rock Declr., ¶ 8].

Defendants' Response to Plaintiff's Asserted Material Fact No. 6

Defendants dispute Plaintiff's Asserted Material Fact No. 6. The record does not include any independent testimony or evidence as to Plaintiff's knowledge of the contents of the Registration or its import.

Plaintiff's Asserted Material Fact No. 7

Because Rock's book publisher handled the registration process concerning the Reed Photograph, at no time did Rock have any documents in his possession which showed any communications that took place between the non-party book publisher and the USCO. Rock only learned of such communications after the discovery deadline in this action when Defendants submitted such communications to the Court as part of their request for a promotion conference to file summary judgment against Plaintiff. [Rock Declr., ¶ 9].

Defendants' Response to Plaintiff's Asserted Material Fact No. 7

Defendants dispute Plaintiff's Asserted Material Fact No. 7. Plaintiff produced the Registration which specifically indicates the existence of correspondence with the Copyright Office. *See* Slotnick Decl., Ex. A.

Dated: New York, New York
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